

FCC MAIL SECTION
Before the
Federal Communications Commission
Washington, D.C. 20554

OCT 4 2 50 PM '94

MM Docket No. 92-282

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-8080
Table of Allotments, RM-8185
FM Broadcast Stations.
(Charlotte Harbor, Marco,
and Punta Gorda, Florida)¹

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: September 27, 1994; Released: October 4, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 7 FCC Rcd 7849 (1992), issued in response to a petition for rule making filed by The University of South Florida ("Petitioner"), requesting the allotment of Channel 255A to Marco, Florida, and its reservation for noncommercial use. Petitioner filed comments restating its intention to apply for Channel 255A, if allotted. Ruth Communications Corporation ("Ruth"), permittee of Station WRWX(FM), Sanibel, Florida, filed comments. Intermart Broadcasting Southwest Florida, Inc., ("Intermart"), licensee of Station WIKX(FM),² Channel 225C2, Punta Gorda, Florida, and Naples Broadcasting Corporation ("Naples"), licensee of Station WGUF(FM), Channel 224A, Marco, Florida, filed joint comments and a counterproposal requesting the substitution of Channel 225C1 for Channel 225C2 at Punta Gorda, Florida, and the reallocation of Channel 225C1 from Punta Gorda, Florida, to Charlotte Harbor, Florida, as that community's first local transmission service. Naples and Intermart also requested the substitution Channel 255A for Channel 224A at Marco, Florida, and the allotment of Channel 219A to Marco, Florida, for use as a noncommercial educational

channel.³ Intermart and Naples filed reply comments. After the record closed Intermart filed a request for official notice.⁴

2. Ruth in its comments notes a pending *Notice of Proposed Rule Making*, 7 FCC Rcd 850 (1992) proposing to change the community of license for its Station WRWK(FM) from Sanibel to San Carlos Park, Florida. Ruth conceives that a site restriction may be necessary for Channel 255A at Marco in order to accommodate both the San Carlos Park and Marco proposals. Ruth also asks that the Commission should take no action in the Marco proceeding which would prejudice action in the San Carlos Park proceeding.

3. Intermart and Naples in their counterproposal request the substitution of Channel 225C1 for Channel 225C2 at Punta Gorda, Florida, and the reallocation of Channel 225C1 from Punta Gorda, Florida, to Charlotte Harbor, Florida, as that community's first local transmission service. In order to accommodate this upgrade and change of community of license, the substitution of Channel 255A for Channel 224A at Marco, Florida, is required.⁵ Intermart and Naples submit that Channel 219A is available for use at Marco as a noncommercial educational channel, therefore the Commission does not need to make an exception to its general policy of assigning noncommercial educational licensees to the reserved portion of the FM band.⁶ Intermart also state that the allotment of Channel 225C1 to Charlotte Harbor is mutually exclusive with Channel 225C2 at Punta Gorda. Punta Gorda will continue to receive local service from Station WCCF(AM).

4. Intermart and Naples claims that their proposals will better serve the public interest since the reallocation of Channel 225C1 from Punta Gorda (population 10,747) to Charlotte Harbor (population 3,327)⁷ will provide first local service to Charlotte Harbor a community immediately adjacent to Punta Gorda, and permit the expansion of service by Station WIKX(FM) to provide 1.0 mV/m service to 813,763 persons, which is an increase of 344,672 persons over its presently licensed Class C2 facility. In addition, Station WGUF(FM), Marco, Florida will be able to expand its service to 6 kilowatts on Channel 255A. Intermart states that Charlotte Harbor is a census designated place ("CDP") located in Charlotte County, Florida, with a 1990 population of 3,327 persons. Intermart notes that Charlotte Harbor has two retail shopping centers, Harbor Square and School House Square, and together these centers have 65 retail businesses. The Punta Gorda/Port Charlotte Telephone Directory, in which listings for Charlotte Harbor are included, lists the following businesses and organizations:

¹ The communities of Charlotte Harbor and Punta Gorda, Florida, have been added to the caption.

² The station formerly had the call sign WQLM(FM).

³ Public Notice of the counterproposal was given on February 17, 1993, Report No. 1927 (RM-8185).

⁴ The Commission's Rules do not contemplate the filing of pleadings beyond the comment and reply comment periods unless specifically requested. However, in this instance we believe that acceptance is in the public interest, since it puts us on notice that the petitioner has filed an application for FM educational channel 219A at Marco, Florida (File No. BPED-930701MB).

⁵ In the joint counterproposal filed by Naples and Intermart, Naples has consented to a hypothetical relocation of its transmitter site in order to substitute Channel 255A for Channel 224A at Marco at coordinates 25-59-57 and 81-38-38. However,

Naples would like to use its current transmitter site (26-01-50 and 81-38-33) for Channel 255A at Marco, Florida, utilizing \$73,215. Naples states that if it cannot utilize \$73,215 at its current transmitter site, it will file an application at the hypothetical site and relocate its transmitter in order to operate on Channel 255A as a 6 kilowatt station.

⁶ The availability of Channel 219A at Marco is based on the return of an application for a new noncommercial station on Channel 219A at Naples, Florida. New Hope Ministry, Inc., filed an application in May, 1991 (File No. BPED-910523MG). That application was returned July 28, 1992, because of technical discrepancies, and the applicant did not file a petition for reconsideration. Therefore, Channel 219A is available for allotment to Marco, Florida.

⁷ All population figures are taken from the 1990 U.S. Census, unless stated otherwise.

Charlotte Harbor Auto Sales, Charlotte Harbor Cabinets, Charlotte Harbor Environmental Center, Inc., Charlotte Harbor Exhaust, Charlotte Harbor Imports, Charlotte Harbor RV Park, Charlotte Harbor Seaplane Base, Charlotte Harbor Shell. Charlotte Harbor also has its own elementary school, water association, two churches and a yacht club.

5. Intermart and Naples filed reply comments and submitted a technical statement which shows that there is no need to impose any additional site restriction on the proposed Marco allotment, because the proposed reference site for Channel 255A at Marco meets the spacing requirements to Ruth's proposal.

6. Based on the above information, we believe the public interest would be served by reallocating Channel 225C1 from Punta Gorda, Florida to Charlotte Harbor, Florida, as that community's first local transmission service. In order to accommodate the upgrade and change in community of license at Charlotte Harbor, we will also substitute Channel 255A for Channel 224A at Marco, Florida.⁸ Intermart has demonstrated that the reallocation would result in a preferential arrangement of allotments. Charlotte Harbor, a CDP with a 1990 population of 3,327 persons, has no other services licensed to it. Punta Gorda (population 10,747) will continue to receive local aural transmission service from Station WCCF(AM). We also note that Charlotte Harbor and Punta Gorda are both located within the Punta Gorda urbanized area, as defined by the 1990 U.S. Census. See *Los Angeles and Norwalk, California*, 6 FCC Red 5317 (1991).⁹ In addition, our analysis shows that upgrading Station WIKX(FM) to Channel 225C1, which could occur regardless of whether the station changes its community of license. However, the reallocation of Channel 225C1 from Punta Gorda to Charlotte Harbor would provide service to an additional 252,717 persons within a 1,936 square kilometer area (747 square miles), and 76 persons will lose reception service within a 19.8 square kilometer area (7.6 square miles). The analysis also shows that the loss area for Punta Gorda and the gain area both receive at least five reception services. Under these circumstances the loss of reception service in an extremely small, extremely sparsely populated, and generally adequately served area, is warranted in order to provide reception service to a significantly greater number of people and a larger area.

TECHNICAL SUMMARY

7. Channel 225C1 can be allotted to Charlotte Harbor in compliance with the Commission's minimum distance separation requirements, with a site restriction of 21.5 kilometers (13.4 miles) southwest of the community.¹⁰ Channel 255A can be allotted to Marco in compliance with the Commission's minimum distance separation requirements, with a site restriction of 14 kilometers (8.7 miles) northeast of the community.¹¹ In accordance with Section 1.420(i) of the Commission's Rules, we will modify the license for Station WIKX(FM) to specify Channel 225C1,

Charlotte Harbor, Florida, as its community of license. We will also modify the license for Station WGUF(FM) to specify Channel 255A at Marco, Florida.

8. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 18, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Charlotte Harbor, Florida	225C1
Marco, Florida	255A, 266C1
Punta Gorda, Florida	--

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Intermart Broadcasting Southwest Florida, Inc., licensee of Station WIKX(FM), Channel 225C2, Punta Gorda, Florida, IS MODIFIED, to specify operation on Channel 225C1, Charlotte Harbor, Florida, in lieu Channel 225C2, Punta Gorda, Florida, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Naples Broadcasting Corporation for Station WGUF(FM), Channel 224A, Marco, Florida, IS MODIFIED, to specify operation on Channel 255A in lieu of Channel 224A, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in the station authorization except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules require prior authorization pursuant to an application for construction permit (FCC Form 301).

⁸ We will not reserve Channel *255A for noncommercial educational use. An engineering analysis has confirmed that reserved noncommercial Channel 219A is available for use at Marco, Florida. Petitioner presently has an application on file for Channel 219A at Marco, Florida (File No. BPED-930701MB).

⁹ FM transmission services from the Punta Gorda urbanized area are: WIKX(FM), Channel 225C2, Punta Gorda, Florida, WVIJ(FM), Channel 219A, Port Charlotte, Florida, WEEJ(FM),

Channel 261C1, Port Charlotte, Florida, and WMMY(FM), Channel 285A, Solana, Florida. WCCF is the only (AM) transmission service from the Punta Gorda urbanized area.

¹⁰ The coordinates for Channel 225C1 at Charlotte Harbor are North Latitude 26-52-25 and West Longitude 82-15-43.

¹¹ The coordinates for Channel 255A at Marco are North Latitude 25-59-57 and West Longitude 81-38-38.

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with the station authorization except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Intermart Broadcasting Southwest Florida, Inc., licensee of Station WIKX(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the change of community of license and upgrade.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
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